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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

JUN 24 2009

UIL No. 408.03-00

SEIT. EP. RA. T3

LEGEND

Individual A = \*\*\*

Individual B = \*\*\*

Individual C = \*\*\*

State A = \*\*\*

IRA X = \*\*\*

Amount Y = \*\*\*

Company A = \*\*\*

Trust T = \*\*\*

Will Z = \*\*\*

Date 1 = \*\*\*

Date 2 = \*\*\*

Date 3 = \*\*\*

Date 4 = \*\*\*

Date 5 = \*\*\*

Date 6 =

Statute 1 =

County D =

Dear

This is in response to a letter dated \_\_\_\_\_, as supplemented by correspondence dated \_\_\_\_\_, submitted on your behalf to the Internal Revenue Service (the "Service") by your authorized representative, in which you request a letter ruling under section 408(d) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury, in support of the ruling request:

Individual A, a resident of State A whose date of birth was Date 1, died testate on Date 2. Individual A was survived by a spouse, Individual B. Individual B's date of birth is Date 3. Individual A was also survived by several children, including Individual C.

At his death, Individual A owned IRA X and had begun receiving distributions from IRA X pursuant to section 401(a)(9) of the Code. Company A is the custodian of IRA X. As of December 31 of the taxable year of Individual A's death, the value of IRA X was Amount Y. It has been represented that IRA X either met or meets the requirements of Code section 408(a). Trust T is designated as the sole beneficiary of IRA X.

On Date 4, Individual A executed Will Z. Article Third of Will Z ("Article Third") creates Trust T for the benefit of Individual B, for life, if Individual B survives Individual A.

Under Article Third, Individual A devises to Individual B an amount equal to the largest amount that may pass to Individual B free of the federal estate tax, notwithstanding any renunciation or disclaimer by Individual B, reduced by (1) the value of property passing outside of Will Z that does not qualify for the marital or charitable deductions, (2) the amount of Individual A's adjusted taxable gifts, and (3) all expenses and debts of Individual A's estate that are chargeable to principal (other than [State A Death Taxes]) that are not allowed as deductions for federal estate tax purposes.

Under Article Third, Individual A appoints Individual B and Individual C as joint trustees of Trust T ("Trustee"). Article Third provides that Trust T will terminate upon the death of Individual B, and that the remaining interest in Trust T shall be paid thereupon as provided in Article Fifth of Will Z ("Article Fifth").

Article Fourth of Will Z ("Article Fourth") provides that, if Individual B survives Individual A and Individual B disclaims any portion of Individual A's property passing outside of Will Z, the disposition of such property will be governed by Article Third.

Article Fifth devises the residue of Individual A's estate outright to Individual B, if Individual B survives Individual A.

Under Article Sixth of Will Z ("Article Sixth"), Individual A appoints Individual B as executor of Will Z ("Executrix"), and names Individual C as the contingent executor of Will Z in the event that Individual B predeceases Individual A, or for any reason Individual B ceases to act as executor of Will Z.

On Date 5, within nine months of Individual A's death, Individual B executed a written disclaimer disclaiming all of Individual B's right, title and interest under Article Third and Article Fourth of Will Z (the "Disclaimer"), and an affidavit to that effect (the "Affidavit").

On Date 5, a Notice of Renunciation of Interest in Estate ("Notice") was served upon Individual B, Individual C, and Company A. A copy of the Disclaimer and of the Affidavit accompanied the Notice.

The Disclaimer was filed with the \*\*\* Court of County D in State A on Date 6.

You represent that Individual B did not accept any of the income or other benefits of the disclaimed property prior to executing the Disclaimer. You also represent that the Disclaimer satisfied the requirements of Code section 2518, and of Statute 1 and all other applicable laws of State A. The Service concurs with your representation that Disclaimer satisfies the requirements of Code section 2518.

You state that as a result of the Disclaimer, the designation of Trust T as beneficiary under IRA X fails, and IRA X passes to the estate of Individual A (the "Estate") and, therefore, that IRA X passes by operation of Article Fifth to Individual B as the beneficiary of the Estate of Individual A.

Based on these facts and representations, you have requested the following rulings:

1. Since the Disclaimer satisfies the requirements of Code section 2518, pursuant to Article Fifth of Will Z, for purposes of Code section 408(d)(3) Individual B is treated as the "distributee" of IRA X;

2. That Individual B, as the sole beneficiary and "distributee" of IRA X, is eligible to roll over, or transfer by means of a trustee-to-trustee transfer, the proceeds from IRA X into a separate IRA established in Individual B's own name within sixty (60) days of the date that the proceeds are distributed to Individual B in her capacity of Executrix of the estate of Individual A; and

3. That amounts distributed from IRA X which are timely contributed to Individual B's rollover IRA will not be included in Individual B's or the Estate's gross income in the year of distribution and contribution (if different). Furthermore, that, instead, the funds will be taxed when distributed from said rollover IRA in accordance with Internal Revenue Code ("Code") section 408(d)(3).

With respect to your ruling requests, section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules with regard to the tax treatment of IRA rollovers under the Code.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if --

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(C)(i) of the Code provides, in summary, that the rollover rules of section 408(d)(3) do not apply to inherited IRAs.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. Thus, under circumstances that conform with the requirements of section 408(d)(3) of the Code, a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner will be able to roll over the decedent's IRA into an IRA set up and maintained in the name of the surviving spouse.

Section 408(d)(3)(E) of the Code provides, in general, that distributions required to be made under section 408(a)(6) may not be rolled over.

"Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987- 19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final Regulations" provides, in relevant part, that a surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60 day period. A rollover may be accomplished even if IRA assets pass through either a trust or an estate.

Section 2046 of the Code provides that for estate tax purposes, disclaimers of property interests passing upon death are treated as provided in section 2518 of the Code.

Section 2518(a) of the Code provides that, if a person makes a qualified disclaimer with respect to any interest in property, then for purposes of estate and gift taxes the disclaimed interest is treated as if it never passed to that person.

Section 2518(b) of the Code defines a qualified disclaimer as an irrevocable and unqualified refusal by a person to accept an interest in property, but only if --

- (1) the refusal is in writing,
- (2) the writing is received by the transferor of the interest, the transferor's legal representative, or the holder of the legal title to the property to which the interest relates not later than the date that is 9 months after the later of --
  - (A) the date on which the transfer creating the interest in the person is made, or
  - (B) the day on which the person attains age 21,
- (3) the person disclaiming the interest has not accepted the interest or any of its benefits, and
- (4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either --
  - (A) to the spouse of the decedent, or
  - (B) to a person other than the person making the disclaimer.

Similarly, Statute 1 provides that a beneficiary of a disposition may renounce all

or part of the beneficiary's interest in property. The term "disposition" includes dispositions created under a will. The renouncing person is treated as having predeceased the decedent with respect to the renounced interest. Under Statute 1, a beneficiary may accept one disposition and renounce another, may renounce a disposition in whole or in part, or with reference to specific amounts, parts, fractional shares or assets comprising the disposition. A renunciation by a surviving spouse of a decedent of a disposition created by the decedent shall not be deemed to be a renunciation by the surviving spouse of all or any part of any other disposition to or in favor of the surviving spouse, regardless of whether the property which would have passed under the renounced disposition is, by reason of the renunciation, disposed of to or in favor of the surviving spouse.

Individual B executed the Disclaimer, in which she renounced her interests under Article Third and Article Fourth, and notified Executor and Trustee of her Disclaimer of such interests within nine months of Individual A's death. The Disclaimer was timely filed with the Surrogate's Court of County D in State A, and delivered to Executor and the IRA X custodian. As a result, Individual B is deemed to have predeceased Individual A for purposes of Article Third and Article Fourth under Statute 1.

It has been represented that the Disclaimer meets the requirements of section 2518 of the Code and satisfies the requirements of Statute 1 and all other applicable state law, and that Individual B did not accept any of the income or other benefits of the disclaimed property prior to executing the Disclaimer. As noted above, the Service concurs with the representation that the Disclaimer satisfies the requirements of Code section 2518.

Individual B wishes to roll over, or transfer, the funds from IRA X to an IRA established in her own name, as Individual A's surviving spouse, on a tax-deferred basis under Code section 408(d).

Section 1.408-8 of the Income Tax Regulations provides that an individual's surviving spouse may elect to treat the surviving spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA at any time after the death of the individual. In order to make the election, the surviving spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the surviving spouse is the sole beneficiary of the trust. The requirement is also not met if a surviving spouse receives an IRA as a beneficiary of the estate of a deceased's IRA owner.

However, a surviving spouse may be eligible to either roll over or transfer, by means of a trustee to trustee transfer, the IRA of a decedent into her own IRA even if she is not eligible to treat the IRA as her own as long as certain conditions are met.



In general, a surviving spouse shall not be eligible to roll over the distributed IRA proceeds into her own IRA if said assets are initially paid to either a trust or an estate. In this case, it is necessary to determine if the general rule applies.

In this case, Individual A designated Trust T, which was created under Article Third of Will Z as the beneficiary of IRA X. However, as a result of Individual B's renunciation of Article Third and Article Fourth under the Disclaimer, Trust T is void and, therefore, at Individual A's death there was no beneficiary designation in effect with respect to IRA X. As a result, by operation of law, IRA X passed to the Estate. Under Article Fifth of Will Z, Individual A left the residue of the Estate outright to Individual B. As a result of the Disclaimer, "residue of the estate" includes IRA X. As the sole beneficiary of the Estate under Article Fifth, Individual B becomes the sole beneficiary of IRA X.

Although Individual is not the named beneficiary of IRA X and may not treat IRA X as her own IRA, she is the sole beneficiary of said IRA X pursuant to Article Fifth of Will Z and, as such, is the "distributee" or "payee" as that term is used in Code section 408(d). As such, she is eligible to roll over or transfer, by means of a trustee to trustee transfer, IRA X, or any portion thereof, into an IRA set up and maintained in her name. Said Rollover, or transfer, must occur no later than the 60<sup>th</sup> day as measured from the date IRA X is distributed to individual B in her capacity as Executrix of the estate of Individual A.

Based on the above, the Service will treat Individual B as a surviving spouse who is eligible to roll over, or transfer, the proceeds of IRA X into an IRA set up and maintained in her name. Therefore, with respect to your ruling requests, we conclude as follows:

1. Since the Disclaimer satisfies the requirements of Code section 2518, pursuant to Article Fifth of Will Z, for purposes of Code section 408(d)(3) Individual B is treated as the "distributee" of IRA X;
2. That Individual B; as the sole beneficiary and "distributee" of IRA X, is eligible to roll over, or transfer by means of a trustee-to-trustee transfer, the proceeds from IRA X into a separate IRA established in Individual B's own name within sixty (60) days of the date that the proceeds are distributed to Individual B in her capacity of Executrix of the estate of Individual A; and
3. That, for the year in which the distribution of IRA X and subsequent rollover or transfer is made (if later), neither Individual B nor the Estate will be required to include in gross income for federal income tax purposes any portion of the amounts rolled over or transferred from IRA X to an IRA set up and maintained in Individual B's name.

In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of amounts that were/are required to be distributed by section 401(a)(9) of the Code, made applicable to an IRA pursuant to Code

section 408(a)(6) (if any).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

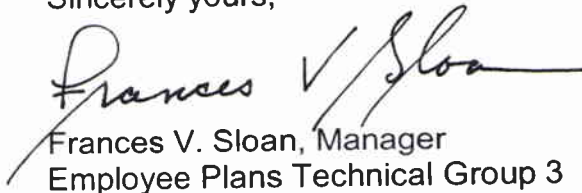
This ruling letter is based on the assumption that IRA X either met, meets, or will meet the requirements of Code section 408(a) at all times relevant thereto. It also assumes that any rollover IRA established by Individual B will meet the requirements of section 408 at all times relevant thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact \*\*\*, I.D. No. \*\*\*, at \*\*\*.  
Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

  
Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter  
Notice of Intention to Disclose

cc: \*\*\*